CUMMINGS & LOCKWOOD LLC

CUMMINGS & LOCKWOOD ASSISTS ESTATE IN PRESERVING SIGNIFICANT ESTATE TAX DEDUCTION CHALLENGED BY IRS

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Cummings & Lockwood LLC successfully defeated an argument by the Internal Revenue Service where the IRS required the payment of additional federal estate tax based on the IRS's partial disallowance of the deduction for state death taxes under § 2058 of the Internal Revenue Code (the "IRC"). As a result, the Estate will be receiving a refund.

In auditing the estate tax return, the IRS argued that the Estate owed additional estate tax because the Estate incorrectly took a deduction for the entire Connecticut estate tax paid on the United States Estate (and Generation-Skipping Transfer) Tax Return (Form 706). The IRS took the position that a deduction was allowed only for the Connecticut estate tax that was attributable to the assets included in the federal gross estate. The IRS disallowed the portion of the Connecticut estate tax that was attributable to gifts made during the decedent's life. Cummings & Lockwood LLC argued that the IRS's interpretation of the application of IRC § 2058 to the Connecticut estate and gift tax system and assessment of additional tax due was incorrect and that no additional estate tax should be paid.

Pursuant to IRC § 2058 (a), an Estate is allowed to take a deduction on the United States Estate (and Generation-Skipping Transfer) Tax Return (Form 706) for (1) estate tax payable to a state (in this case, Connecticut) and (2) in respect of property included in the gross estate. In calculating the amount of Connecticut estate tax due at a decedent's death, such tax is assessed against and payable from property included in a decedent's gross estate.

The Connecticut estate tax system takes into account gifts made during or after 2005 as set forth in Connecticut General Statute § 12?391 and Connecticut General Statutes § 12?391(d)(1)(C) simply to determine the rate of tax applicable at death. In other words, a taxpayer may use his or her exemption from Connecticut estate and gift tax during life, but such gifts will cause his or her estate to be taxed at a higher rate upon death. In effect, the Connecticut taxable gifts are taken into account to determine the rate of tax, but the tax itself is imposed solely on and is paid out of the assets included in the gross taxable estate.

As a result of the foregoing, Cummings & Lockwood LLC argued that an Estate's entire estate tax liability owed and paid to the State of Connecticut is an estate tax actually paid to any state in respect of any property included in the gross estate of a decedent as required under IRC § 2058. Accordingly, the IRS conceded that such estate tax liability paid to the State of Connecticut gives rise to the full deduction on the Form 706. It was a significant victory for the Estate.